



# FORECLOSURE SALE

Shingle Creek Tower Apartments  
6221 Shingle Creek Parkway  
Brooklyn Center, MN 55430  
A 122 Unit Multifamily Community

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Is offered for sale at foreclosure:

- ❖ **The foreclosure sale is limited to 501 (c) 3 non-profits and governmental entities that have long-term experience with affordable housing in the State of Minnesota. Non-profit bidders are required to submit to the Foreclosure Commissioner: 1) evidence of their position in the organization which includes a notarized designation of authority to bid at the sale; and 2) a Certificate of Good Standing for the non-profit organization.**



Oral bids will be accepted on:  
November 10, 2011  
at: 10:00 am (local time)

Sale Location:  
Hennepin County Sherriff's Office  
Civil Division Courthouse, Room 30  
350 South 5<sup>th</sup> Street  
Minneapolis, MN 55415



U. S. Department of Housing and Urban Development  
Fort Worth Property Disposition Center  
801 Cherry Street, Unit #45, Ste. 2500  
Fort Worth, TX 76102

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| <input checked="" type="checkbox"/> <b>ATTACHMENT A</b> - Property at a Glance  | <input type="checkbox"/> <b>ATTACHMENT E</b> – Repair Summary and narrative; and Environmental information if available |
| <input checked="" type="checkbox"/> <b>ATTACHMENT B</b> - Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder | <input checked="" type="checkbox"/> <b>ATTACHMENT F</b> – Certification of Substantial Compliance                       |
| <input checked="" type="checkbox"/> <b>ATTACHMENT C</b> - Foreclosure Sale Use Agreement  | <input checked="" type="checkbox"/> <b>ATTACHMENT G</b> – Protecting Tenants at Foreclosure Act                         |
| <input checked="" type="checkbox"/> <b>ATTACHMENT D</b> - Letter of Credit (LoC) Sample   |   |

**THESE FORMS ARE AVAILABLE AT**

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/forms](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms)

**OR USE THE URL PROVIDED BELOW TO OBTAIN THE FORM**

<input checked="" type="checkbox"/>	Previous Participation Certification (Form HUD-2530) <a href="http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf">http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf</a>
<input checked="" type="checkbox"/>	Personal Financial and Credit Statement (Form HUD-92417) for each proposed principal and/or partner <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_20675.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_20675.pdf</a>
<input type="checkbox"/>	Affirmative Fair Housing Marketing Plan (Form HUD-935.2A) <a href="http://www.hud.gov/offices/adm/hudclips/forms/files/935-2a.pdf">http://www.hud.gov/offices/adm/hudclips/forms/files/935-2a.pdf</a>
<input checked="" type="checkbox"/>	Management Entity Profile (Form HUD-9832) <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35584.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35584.pdf</a>
<input checked="" type="checkbox"/>	Project Owners Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839 A) <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35589.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35589.pdf</a>
<b>OR</b> <input checked="" type="checkbox"/>	Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity of Interest or Independents Management Agents (Form HUD-9839 B) <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9839-b.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9839-b.pdf</a>
<b>OR</b> <input type="checkbox"/>	Project Owner's/Borrower's Certification (Form HUD-9839 C) - For elderly housing projects managed by Administrators only <a href="http://www.hud.gov/offices/adm/hudclips/forms/files/9839-c.pdf">http://www.hud.gov/offices/adm/hudclips/forms/files/9839-c.pdf</a>

**(Only one of these Forms, 9839A, B or C, will be required for management certification.)**

**FAILURE TO SUBMIT THE REQUIRED DOCUMENTS WITHIN THE INDICATED TIME FRAME SHALL BE GROUNDS FOR REJECTION OF THE BID. HUD RESERVES THE RIGHT TO REJECT THE BID AND RETAIN THE BIDDER'S EARNEST MONEY DEPOSIT.**

## SECTION 1 - INTRODUCTION AND GENERAL INFORMATION

1. **DEFINITION OF INVITATION FOR BID:** This document, including attachments, exhibits, and any amendment thereto, constitutes the Invitation for Bid ("Invitation") for Shingle Creek Apartments, FHA Number; 092-35634 ("Project" or "Property"). PROPERTY AT A GLANCE, Attachment A to this Invitation, contains a summary of facts, figures, and most terms of the foreclosure sale ("foreclosure sale" or "sale"). This Invitation also includes **information concerning Previous Participation Certification (Form HUD-2530) requirements** and a list of the forms and statements necessary to complete a responsive bid. This Invitation does not terminate until the closing of the foreclosure sale has occurred.
  2. **BID RESPONSIVENESS:** A bid must be responsive to the terms of the sale. To be considered for award, a bid must comply in all material respects with this Invitation. Each bid on its face shall be firm, unconditional, responsive, fixed in one amount certain, and not in the alternative. Special conditions, alterations, or deletions will render a bid non-responsive. The terms of the foreclosure sale are those set out in the Invitation, primarily the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder ("Acknowledgment") and the Foreclosure Sale Use Agreement ("Use Agreement"). Lack of an earnest money deposit, as required by this Invitation, will be cause for bid rejection.
  3. **SALE TO HIGHEST QUALIFIED BIDDER:** Sale of this project will be made to the highest eligible, responsive, qualified Bidder. **The foreclosure sale is limited to 501 (c) 3 non-profits and governmental entities that have long-term experience with affordable housing in the State of Minnesota. Non-profit bidders are required to submit to the Foreclosure Commissioner: 1) evidence of their position in the organization which includes a notarized designation of authority to bid at the sale; and 2) a Certificate of Good Standing for the non-profit organization.** The defaulting owner of the property, or any affiliate thereof, will not be permitted to bid.
  4. **NO REDEMPTION PERIOD:** This sale is not subject to redemption by the previous owner.
  5. **BID ACCEPTANCE OR REJECTION:** At any time prior to closing, HUD reserves the right to reject any and all bids, to waive any informality in any bid received, and to reject the bid of any Bidder HUD determines lacks the experience, ability or financial responsibility needed to own the project and to provide management acceptable to HUD.
  6. **CANCELLATION OF SALE:** HUD reserves the unconditional right to cancel this Invitation and/or reject any and all bids at any time prior to the closing of the foreclosure sale.
  7. **BIDDER'S DUE DILIGENCE:** Bidders, their agents and advisors should review carefully the information set forth in this Invitation and any additional information made available by HUD, and should undertake their own investigations of the property and related collateral to evaluate the risks associated with purchasing the property.
  8. **POST-CLOSING REQUIRED REPAIRS:** HUD is not requiring specific repairs. Repair requirements that must be completed after closing include repairing the Property to meet state and local codes. A repair escrow will be required as provided in Section 5, paragraph 6. For more information refer to the rider, "Required Rehabilitation, Repair Escrow, Relocation."  
**NOTE:** HUD is not providing **cost estimates** of the required repairs.
- While care has been exercised to assure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the project is of such type and general character as might interest them in its purchase, and HUD makes no warranty as to the accuracy of such information. The failure of any Bidder to inspect, or be fully informed as to the condition of all or any portion of the project being offered, or condition of sale, will not constitute grounds for any claim, demand, adjustment, or withdrawal of a bid.**
9. **RECORDATION OF CERTAIN DOCUMENTS:** Attachment C, Use Agreement, with any riders thereto, if provided herein, will be recorded with the Deed.
  10. **SOURCE FOR ADDITIONAL INFORMATION:** For further information, please contact the Realty Specialist identified in the Property at a Glance.

## SECTION 2 -PREVIOUS PARTICIPATION CERTIFICATION

**PREVIOUS PARTICIPATION FOR PARTICIPANTS IN THE MULTIFAMILY PROGRAMS-** The Preservation Approval Process Improvement Act of 2007 allows a Bidder and/or Management Agent to file the required Previous Participation Certificate (Form HUD-2530) in either electronic or paper format. If filing the paper format, the Form HUD-2530 must be submitted to the Realty Specialist identified in the Property at a Glance. If filing electronically, use HUD's Active Partners Performance System (APPS) to submit a Previous Participation Certification (Form HUD-2530) on HUD's Secure Systems Internet site. **Prior registration is not mandatory in order to bid at the foreclosure**

**sale. However, it is suggested that all potential bidders registering for the first time in APPS do so at least two weeks prior to the sale.** Instructions for registering for both "Secure Systems" and APPS are located on the [Active Partners Performance System \(APPS\) web site](#).

**Be advised,** if a Management Agent will be participating in the management of the project, or if Bidder is changing principals, adding principals, changing the name of the purchasing entity, or changing tax identification from

information already recorded in APPS or on a paper 2530, **it is the High Bidder's responsibility to ensure that all participants register and complete the 2530 process within the prescribed time frames.**

**Failure of any participant to submit a Previous Participation Certification (Form HUD-2530) or other required document(s) within the indicated time frame specified in Section 4 below, may be grounds for rejection of the bid. The High Bidder must be approved by HUD in order to close the purchase.**

### **SECTION 3 - FORECLOSURE SALE PROCEDURES AND SUBMISSION OF BIDS**

1. **GENERAL:** In order to submit a responsive bid to this Invitation, a Bidder must submit the items listed in this Section, and the additional documents/items, as indicated in Section 4, Paragraphs 2 and 3.
2. **BIDDING AT THE FORECLOSURE SALE:**
  - (a) The foreclosure sale is an oral, open bid sale that takes place at the date, time and place indicated in the attached Property at a Glance.
  - (b) The Bidder must either:
    - (i) State a bid price orally at the sale, **or**
    - (ii) Submit a written bid to the person that conducts the sale two (2) Federal Government business days before the date of sale. Written bids, if received, will be read aloud at the sale before oral bids are accepted. Only the person that submitted the written bid, or an agent thereof, may raise a written bid price. Please contact the Realty Specialist identified in the Property at a Glance for details regarding submitting a written bid.
3. **ITEMS THAT MUST BE SUBMITTED AT THE FORECLOSURE SALE:**
  - (a) **Bidder eligibility:** The foreclosure sale is limited to non-profits and governmental entities that have long-term experience with affordable housing in the State of Minnesota. Non-profit bidders are required to submit to the Foreclosure Commissioner:
    - (i) evidence of their position in the organization which includes a notarized designation of authority to bid at the sale; and
    - (ii) a Certificate of Good Standing for the non-profit organization.
  - (b) **Earnest Money Deposit:**
    - (i) The Earnest Money Deposit, for not less than the amount specified in the Property at a Glance, must be submitted to the Foreclosure Commissioner prior to presenting an oral or written bid.
    - (ii) The deposit must be in the form of a money order, certified check, or cashier's check payable to:  
**THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**
    - (iii) No other method of payment for the Earnest Money Deposit is acceptable.
    - (iv) A financial organization submitting a bid on its own behalf must have the Earnest Money Deposit drawn on a separate financial organization.
    - (v) Lack of proper deposit will be cause for rejection of the bid by HUD.
    - (vi) Immediately following the sale, Earnest Money Deposit will be returned to all but the High Bidder.
  - (c) **Terms and Requirements of Foreclosure Sale – Acknowledgment by Bidder:** Immediately after the foreclosure sale has been completed, the High Bidder must submit **ONE** signed copy of the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder to the Foreclosure Commissioner.
4. **CORRECTIONS:** Any changes or erasures made to information submitted by a Bidder in connection with a written bid may be made by the Bidder or their agent only and must be initialed by the Bidder or their agent.
5. **TELEGRAPHIC OR FACSIMILE BIDS:** Telegraphic or facsimile bids and/or bid modifications will not be considered for award.
6. **VERBAL NOTIFICATION TO THE HIGH AND SECOND HIGH BIDDER:** The highest Bidder ("High Bidder") and second highest Bidder ("Second High Bidder") will be notified orally of their bidding positions by the Foreclosure Commissioner immediately after the foreclosure sale. If the High Bidder and/or Second High Bidder are not present at the sale, they will be contacted by the Foreclosure Commissioner promptly after the foreclosure sale.

### **SECTION 4 - POST FORECLOSURE SALE PROCEDURES**

1. **CONTINUANCE OF OFFERS:** The high bid shall be deemed to be a continuing offer from the time of the foreclosure sale until closing or bid rejection by HUD. The second high bid shall be deemed to be a continuing offer until execution of the Use Agreement or until thirty (30) days after the foreclosure sale, whichever occurs first, unless HUD and the Second High Bidder mutually agree to extend the offer. After the above activities have occurred, or the extension agreement has ended, the bid will be deemed to have expired.

2. **SUBMISSION OF POST-BID DOCUMENTS BY HIGH BIDDER:** The High Bidder must submit the following documents, statements and forms. These documents, statements and forms are required for submitting a complete bid. Complete instructions are provided in the Acknowledgment by Bidder. Contact information is provided in the Property at a Glance.

❖ **WITHIN TWO (2) FEDERAL GOVERNMENT BUSINESS DAYS AFTER FORECLOSURE SALE:**

(a) **Previous Participation Certification in either electronic or paper format:**

i. **Electronic filing: APPS and Secure Systems (e2530):**

- 1) **Bidders not registered in APPS and Secure Systems:** The High Bidder must register in the **Active Partners Performance System (APPS)**, and the HUD's Multifamily Secure Systems; **or**
- 2) **Bidders previously registered in APPS and Secure Systems:** The High Bidder must provide evidence of registration.

ii. **Paper Filing:**

- 1) **Form HUD 2530:** The completed paper Form HUD-2530(s), with original signatures, for the purchasing entity and all principals. Proposed ownership must have established tax identification or social security number; A "to be formed" entry will not be accepted, **and**
- 2) **Organizational Chart** –an organization chart, reflecting all principals of the purchasing entity and each principal's percentage of ownership must accompany the completed Form HUD-2530.

(b) **Certification of Substantial Compliance:** The **complete and original** Certification of Substantial Compliance (Attachment F).

- **WITHIN FIVE (5) FEDERAL GOVERNMENT BUSINESS DAYS AFTER FORECLOSURE SALE:** The High Bidder must submit a Written Statement of Experience as required below in paragraph 3. Instructions for the content of the Written Statement of Experience are provided in the Terms and Requirement of Foreclosure Sale – Acknowledgment by Bidder, Part II, paragraph 5.

- **WITHIN TEN (10) FEDERAL GOVERNMENT BUSINESS DAYS AFTER FORECLOSURE SALE:** The High Bidder must, if checked below, submit the additional post-bid documents:

- ☐ Affirmative Fair Housing Marketing Plan (Form HUD-935.2A)
- ☒ Previous Participation Certification (Form HUD-2530) for Purchasing Entity, if different from bidding entity, See Sections 2 and 4 for more information
- ☒ Previous Participation Certification- paper Form HUD-2530 for the Managing Agent, or submission of the "Participation Detail" page evidencing prior registration in APPS, or the "Participant Successfully Registered" page establishing the Management Agent's initial registration in APPS.
- ☒ Personal Financial and Credit Statement (Form HUD-92417) for each proposed principal/general partner
- ☒ Management Entity Profile (Form HUD-9832)
- ☒ Project Owner's Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839A):
- OR**
- ☒ Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity-of-Interest or Independent Management Agents (Form HUD-9839B):
- OR**
- ☐ Project Owner's/Borrower's Certification (Form HUD-9839C-for elderly housing project managed by Administrators only)

**(Only one of these Forms A, B or C will be required for management certification.)**

- **WITHIN FIFTEEN (15) FEDERAL GOVERNMENT BUSINESS DAYS AFTER FORECLOSURE SALE:** If the Management Agent or the High Bidder (owning entity) elected to file the required Form HUD-2530 electronically (e2530) and did not submit the paper Form HUD-2530 within the time frames specified above, the High Bidder and/or Management Agent must electronically file the e2530.

**FAILURE TO SUBMIT THE REQUIRED DOCUMENTS WITHIN THE INDICATED TIME FRAME MAY BE GROUNDS FOR REJECTION OF THE BID. HUD RESERVES THE RIGHT TO REJECT THE BID AND RETAIN THE BIDDER'S EARNST MONEY DEPOSIT.**

3. **QUALIFICATION, ACCEPTANCE, REJECTION OF BID:**

(a) **Required Bidder Qualifications to Purchase Property (Project):**

It is the objective of the Department's multifamily foreclosure process to transform troubled and distressed multifamily properties into viable, long-term affordable rental housing resources. To accomplish this objective, the Department will only permit a Bidder to acquire a property from HUD's foreclosure sale that has the financial capacity and generally five (5) years of demonstrated experience in successfully owning and managing distressed and troubled multifamily properties as viable, low-income housing resources.

The Department has the discretion to evaluate, starting with the highest Bidder and proceeding in descending order, if necessary, the Bidder's eligibility to bid, and experience, qualifications and capacity to purchase the Property based on the submission of the documentation described below, any other information independently verified by HUD and any other information required by the Bid Kit. The documentation must demonstrate that the Bidder owns and is successfully managing and operating properties of similar size and characteristics (including problematic complexities) as the Property being sold. The documentation will be used to determine whether the Bidder has the required demonstrated experience and financial capacity to acquire and successfully transform the Property into a long-term,

viable rental housing resource. HUD shall, in its sole discretion, accept or reject any bid submitted in the sale of the Property. The review and approval of the Previous Participation Certification (Form HUD-2530) is required, for the purchase of the Property. However, Previous Participation Certification approval is only a threshold to HUD's review and potential approval of all other required documentation.

Based on the required documentation, as set forth in Part II, paragraph 5 of the Acknowledgment by Bidder, as well as any additional information independently obtained and verified by the Department, HUD will determine whether the Bidder has the requisite experience, qualifications and financial capacity to purchase the Property. This determination is a matter within HUD's sole and absolute discretion. If HUD determines that the Bidder does not have the experience, qualifications and/or financial capacity to purchase the Property, HUD will reject the bid and proceed to the next highest Bidder pursuant to the terms of the Invitation to Bid.

In the event that HUD rejects a bid, HUD will return the Bidder's Earnest Money Deposit, provided the Bidder has not failed to meet time limits required to submit documentation, or made any misrepresentation or material omission(s) in the Bidder's submission of the bid and supporting documentation. If the Bidder fails to properly submit all required documentation within the required time limit or HUD determines that the Bidder misrepresented his or her experience, qualifications or financial capacity to successfully own and operate the Property, or omitted a material fact(s), HUD will retain the Bidder's Earnest Money Deposit as liquidated damages and may seek any and all additional available remedies.

HUD may require the High Bidder to obtain the services of a qualified property management firm. Management acceptable to HUD (see paragraph 5 below) must be approved prior to closing.

- (i) If HUD approves the High Bidder as being eligible to bid and qualified to purchase the Property, the High Bidder will be confirmed as and identified as the Purchaser.
- (ii) If the high bid is rejected due to HUD's determination that the High Bidder is not eligible to bid and/or qualified to purchase the project, HUD will notify the High Bidder in writing.
- (b) If HUD rejects the High Bidder, and HUD elects to contact the Second High Bidder, and/or succeeding Bidders as Bidders withdraw or do not qualify, to purchase the Project. If contacted by HUD, the Second High Bidder or succeeding Bidder will be offered the opportunity to purchase the Project and will be given twenty-four (24) hours to submit the earnest money deposit and the documents to support their eligibility to bid as required in Section 3, paragraph 3. HUD will review the Bidder's post bid document submissions to determine if the Bidder is eligible to bid and qualified to purchase the Project.
  - (i) If HUD approves the Bidder as being eligible to bid and qualified to purchase the Property, the Bidder will be confirmed as and identified as the Purchaser.
  - (ii) If the bid is rejected due to HUD's determination that the Bidder is not eligible to bid and/or qualified to purchase the project, HUD will notify the Bidder in writing.
- (c) HUD's notification of rejection due to lack of qualifications, if applicable, shall be deemed to be given when mailed to the individual indicated in the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder.
- (d) The written rejection of the bid will be made as promptly as possible and generally within thirty (30) days after the date of the foreclosure sale.

4. **HANDLING OF THE EARNEST MONEY DEPOSIT:** The Earnest Money Deposit will be submitted by all Bidders to the Foreclosure Commissioner. The High Bidder's deposit will be held by HUD:

- (a) If HUD determines that the High Bidder is eligible to bid and qualified to own and manage the Project, its bid is acceptable and the High Bidder complies with the requirements of this Invitation, HUD will apply the amount of the Earnest Money Deposit to the sales price at the closing of the foreclosure sale.
- (b) If the bid amount is unacceptable, the Bidder's Earnest Money Deposit will be refunded.
- (c) If the High Bidder is deemed unqualified to purchase the Project, and the High Bidder has complied with the requirements of this Invitation the Earnest Money Deposit will be refunded.
- (d) If the High Bidder has failed to comply with the provisions outlined in this Invitation, including failing to submit support documentation for bidding eligibility or made any misrepresentation in bidding eligibility, the Earnest Money Deposit will be retained by HUD.
- (e) Interest will not be paid on Earnest Money Deposits.

5. **REVIEW OF PROJECT MANAGEMENT:** HUD will review the statements and forms submitted as required in this Invitation, to determine, in its sole discretion, if the proposed management entity has the necessary qualifications to operate, manage, and/or administrate the type and nature of property (Project) being offered for sale. HUD may elect to discuss project management plans after submission of the post-bid documents by the High Bidder. HUD reserves the right to reject the bid of any Bidder and retain the Earnest Money Deposit, if the Bidder does not provide management acceptable to HUD.

6. **CLOSING DATE REQUIREMENT:** The closing date and place will be determined by the Foreclosure Commissioner and/or HUD and will take place within the time period specified in the Acknowledgment, (Attachment B). The purchaser will be notified of said date and place by the Foreclosure Commissioner.

7. **EXTENSION OF CLOSING:** The right to extend the sales closing is expressly reserved by HUD as set forth in the Acknowledgment (Attachment B).

## SECTION 5 – CLOSING

1. **EXECUTION OF USE AGREEMENT:** The Bidder that is confirmed as Purchaser and HUD will execute Attachment C, "Foreclosure Sale Use Agreement," at closing. HUD will have the Foreclosure Commissioner's Deed, Use Agreement and all attachments recorded.
2. **CASH DUE AT CLOSING:** Cash due at closing is the bid price less the earnest money deposit received, plus any prorations (see paragraph 3 below). Cash due at closing includes all initial deposits to reserve accounts, if applicable.
3. **PRORATIONS:** Purchaser is responsible for paying all outstanding assessments, real estate and property taxes, utility bills including, but not limited to, water/sewer, gas and electric, as well as any other liens/assessments encumbering the property not extinguished by the foreclosure sale action. These amounts will not be prorated. However, if Extension Fees were paid, and if the sale closes prior to the expiration of an extension period, the prorated amount of the Extension Fees for the unused portion of the extension period shall be credited toward the amount due from the Purchaser at closing.
4. **CLOSING EXPENSES:** Irrespective of local custom, the Purchaser shall pay all stipulated closing expenses, including, but not limited to, all documentary stamp taxes, and any costs in connection with a review of title or title insurance as may be requested by the Purchaser. HUD will pay recording fees for the transfer of title and recordation of the Use Agreement.
5. **METHOD OF PAYMENT:** Cash due at closing shall be paid in the form of a money order, certified check, or cashier's check made payable to:  
**THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**
6. **REPAIR ESCROW:** If Post-Closing Repair Requirements are included in the sale, at **closing** the Purchaser shall provide HUD with assurance that the required repairs will be completed. At HUD's sole discretion, either a Letter of Credit or Cash Escrow must be submitted by the Purchaser to ensure the completion of repairs:
  - (a) **Letter of Credit:** an unconditional, irrevocable, and nondocumentary Letter of Credit (LoC), or a group of no more than five (5) LoCs, in the amount indicated in the Property at a Glance. Such LoCs shall expire no earlier than six (6) months after completion of the stated required repairs. HUD will release the undrawn balance in the LoCs six (6) months after completion of repairs. Such undrawn balance shall be of an amount equal to ten percent (10%) of the total estimate of repairs.
  - (b) **Cash Escrow:** in the amount indicated in the Property at a Glance to be held by HUD in a non-interest bearing account. The Cash Escrow will be returned to the Purchaser after the repairs have been satisfactorily completed, except for ten percent (10%) which will be held for an additional six (6) months.
7. **CONVEYANCE:** Conveyance of the project shall be by Foreclosure Commissioner's Deed ("Deed"). The Deed will not contain any warranty of title.
8. **RECORDATION OF DEED:** HUD shall record the Deed and all other recordable documents. All recordation costs for the transfer of title and the Use Agreement shall be at the expense of HUD.
9. **DOCUMENTS (TO BE) FURNISHED OR EXECUTED AT CLOSING**  
☒ Foreclosure Sale Use Agreement    ☒ Letter(s) of Credit    ☐ Cash Escrow    ☒ Closing Statement

## SECTION 6 – DISCLAIMERS

1. **DISCLAIMER:**
  - (a) As stated in Section 1, paragraph 7, Bidders interested in purchasing this project are expected to perform due diligence to arrive at conclusions as to physical condition, number and occupancy of revenue producing units, estimates of operating costs, repair costs (where applicable), and any other factors bearing upon valuation of the Project. **Any bid submitted shall be deemed to have been made with full knowledge of all the terms, conditions and requirements contained in this Invitation and in any Addendum hereof.**
  - (b) While care has been exercised to assure accuracy, all information provided is solely for potential purchasers to determine whether or not the Project is of such type and general character as might interest them in its purchase. **HUD makes no warranty as to the accuracy of such information.** The failure of any Bidder to inspect, or be fully informed as to the condition or value of the Project, or conditions of sale, will not constitute ground for any claim, demand, adjustment or withdrawal of a bid.
2. **UNAUTHORIZED ORAL STATEMENT OR MODIFICATIONS:** Any oral statement or representation by any representative of HUD changing or supplementing this Invitation, or any condition hereof, is unauthorized and shall confer no right upon the Bidder (Purchaser).
3. **HUD LIABILITY:** HUD's liability shall not exceed the amount of such portion of the bid price that has been paid to HUD.



## Attachment A

**Shingle Creek Tower Apartments** (aka View Point at Shingle Creek) **FHA #: 092-35634**

ADDRESS:	<b>6221 Shingle Creek Brooklyn Center, MN 55430</b>	EARNST MONEY:	<b>\$75,000</b>	SALES PRICE:	<b>Unstated Minimum</b>
COUNTY:	<b>Hennepin</b>	LETTER OF CREDIT:	<b>\$25,000</b>	TERMS:	<b>All Cash- As Is:30 days to close</b>
				SALE TYPE:	<b>Foreclosure</b>

## PROPERTY INFORMATION

<b>Total Units</b>	<b>Residential</b>	<b>Commercial</b>	<b>Foundation:</b>	<b>Slab on grade</b>
<b>122</b>	Revenue <b>122</b>	<b>0</b>	<b>Roof:</b>	<b>Flat (membrane)</b>
	Non-Revenue		<b>Exterior:</b>	<b>Brick veneer</b>
<b>Building/Site Type</b>	<b>Elevator</b>		<b>Floors/Finish:</b>	<b>Carpet/tile</b>

Number of Buildings	Stories	Year Built	Rehab Year	Approximate Site Acreage	Approximate Net Rentable Area
1	13	1974	2003	4.328	75,960

## Mechanical Systems

<b>Heating:</b>		<b>Air</b>	
Fuel	<b>Gas</b>	<b>Conditioning</b>	<b>None</b>
System	<b>Central</b>	Windows	<b>Screen</b>
<b>Hot Water:</b>			
Fuel	<b>Gas</b>		
System	<b>Central</b>		

## Utilities

Public Water	<input checked="" type="checkbox"/>
Gas Main	<input checked="" type="checkbox"/>
Electric	<input checked="" type="checkbox"/>
Sanitary Sewer	<input checked="" type="checkbox"/>
Storm Sewer	<input type="checkbox"/>
Septic Tank	<input type="checkbox"/>

## Parking

Street	<b>Asphalt</b>
Curb	<b>Concrete</b>
Sidewalk	<b>Concrete</b>
Parking Lot	<b>Asphalt</b>
Parking Spaces	<b>1 Lot 122</b>

## Apartment Features

<input type="checkbox"/>	Air Conditioning
<input type="checkbox"/>	Dishwasher
<input type="checkbox"/>	Microwave
<input type="checkbox"/>	Garbage Disposal
<input checked="" type="checkbox"/>	Refrigerator
<b>elec</b>	Range/Oven
<input checked="" type="checkbox"/>	Drapes/Blinds

## Community Features

<input type="checkbox"/>	Garage
<input type="checkbox"/>	Covered Parking
<input checked="" type="checkbox"/>	Laundry Facility
<input checked="" type="checkbox"/>	Cable/Sat Hookup
<input type="checkbox"/>	Playground
<input type="checkbox"/>	Pool
<input checked="" type="checkbox"/>	Community Space

## Owner Expense

Water
Gas
Electricity

## Tenant Expense

**A/C Unit**

## OCCUPANCY

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2011	80%	79%	81%	82%	83%	82%	81%					
2010								83%	81%	82%	81%	81%

**ESTIMATED ANNUAL RENTAL INCOME and EXPENSE:**

# of Units	Type (# of Bdrs)	Approx Square Feet	Current Rent	Estimated/ Possible After Sale Rent	Estimated/ Possible Total After Sale Rent
6	1 *HC	575	\$575	\$575	\$3,450
72	1	575	575	575	41,400
3	2 HC	832	725	725	2,175
41	2	832	725	725	29,725
	*HC -accessible				
Estimated/Possible Monthly Total					\$76,750

Total Estimated/Possible Annual Income	
Rent	\$921,000
Commercial	1,200
Parking	
TOTAL	\$922,200
Estimated Annual Expenses	
Administrative	\$167,875
Utilities	140,000
Operating	88,115
Taxes/Insurance	198,260
Reserve/Replace	36,600
O&M	1,000
Total	\$631,850

**COMMENTS CONCERNING PROPERTY INFORMATION:**

- The foreclosure sale is limited to 501 (c) 3 non-profits and governmental entities that have long-term experience with affordable housing in the State of Minnesota. Non-profit bidders are required to submit to the Foreclosure Commissioner: 1) evidence of their position in the organization which includes a notarized designation of authority to bid at the sale; and 2) a Certificate of Good Standing for the non-profit organization.
- HUD does not own or operate this facility and can not grant access for viewing. Viewing is at the discretion of the current owner/management.
- Interested parties should verify Flood Zone Data for the area. Property may be located in a flood zone.

**Due diligence should be performed in advance of submitting a bid. While care has been exercised to ensure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the Project is of such type and general character as to interest them in its purchase. HUD makes no warranty as to the accuracy of such information.**



## USE RESTRICTIONS

**20 Years affordable rental housing.**

**2 Years rent cap protection for eligible residents.**

## TERMS OF SALE

- **The foreclosure sale is limited to 501 (c) 3 non-profits and governmental entities that have long-term experience with affordable housing in the State of Minnesota. Non-profit bidders are required to submit to the Foreclosure Commissioner: 1) evidence of their position in the organization which includes a notarized designation of authority to bid at the sale; and 2) a Certificate of Good Standing for the non-profit organization.**
- This is an "All-Cash" – "As-Is" sale. HUD is not providing financing for this sale. Payment of the full bid price must be presented at closing.
- No consideration will be given to a bid submitted by any party currently suspended or debarred from participating in HUD programs. As provided for in 24 CFR, Sec. 27, the defaulting mortgagor, or any principal, successor, affiliate, or assignee on the mortgage at the time of default shall not be eligible to bid on or otherwise purchase this property. (Principal and affiliate are defined at 24 CFR 200.215.)
- Bids for this property will only be considered for acceptance if properly submitted by following the bidding instructions which includes submitting the required documents to establish bidding eligibility, earnest money, forms and statements as required in the bid kit. High Bidder will be reviewed to determine if qualified to purchase, own and manage the project being offered.
- The High Bidder must certify to HUD that any/all projects that are owned by the Bidder or its affiliates and are located in the same jurisdiction (City or Town) where the project is located are in substantial compliance with applicable state and local housing statutes, regulations, ordinances and codes. See Attachment F, Certification of Substantial Compliance.
- High Bidder has the option to file the required Previous Participation Certification (Form HUD-2530) in electronic or paper format. **For questions concerning APPS contact the Multifamily Housing Systems Help Desk at 1-800-767-7588. For questions concerning Secure Systems contact the REAC Help Desk at 1-888-245-4860.**
- Repairs, must be completed to HUD's satisfaction within twelve (12) months of closing. Refer to the Use Agreement, Rider 5, for more information.
- Closing is to be held 30 days after HUD notifies the High Bidder that they are qualified to purchase the project being offered.
- If HUD authorizes an extension of the closing, the purchaser must pay a fee which is the greater of 1.5% of the bid price or HUD's holding costs of \$26.35 per unit per day for each 30 day period.
- Riders placed in the Deed will include the following: Equity Participation; Affordability; Two-Year Tenant Protection for Pre-Existing Very Low-Income Tenants; Nondiscrimination Against Multifamily Section 8 Certificate Holders and Voucher Holders; Required Rehabilitation, Repair Escrow, Relocation; Lead-Based Paint Hazards; Asbestos Hazards; Mold Hazards.

**PROSPECTIVE BIDDERS SHOULD READ AND THOROUGHLY UNDERSTAND ALL INFORMATION PROVIDED HEREIN AND IN THE BID KIT PRIOR TO SUBMITTING A BID.**

## INFORMATION AND BID KIT

INFORMATION and BID KIT may be viewed or printed at

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/pd/mfpplst](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/pd/mfpplst).

You may also sign up for our electronic mailing list at

<http://www.hud.gov/subscribe/signup.cfm?listname=Multifamily%20Property%20Disposition&list=mfpd-l>. If you do not have access to the internet or cannot download a PDF file, you may contact the Realty Specialist identified below to obtain a copy of the bid kit.

### Bids for Shingle Creek Tower Apartments:

MUST BE PRESENTED ON: November 10, 2011

At: 10:00 am (local time)

Location of Foreclosure Sale:

Hennepin County Sheriff's Office  
Civil Division Courthouse, Room 30  
350 South 5<sup>th</sup> Street  
Minneapolis, MN 55415

### HUD Office and Contact Information for submission of documents:

Fort Worth HUD Office  
Multifamily Property Disposition Center, 6A HMLAT  
801 Cherry Street, Unit #45, Ste. 2500  
Fort Worth, TX 76102

**Realty Specialist:** Debie Bolin

Phone: (817) 978-5822

Fax: (817) 978-6018

Email: [debief.bolin@hud.gov](mailto:debief.bolin@hud.gov)

## INSPECTION OF PROPERTY

HUD does not own or operate this facility and cannot grant access for viewing. Viewing is at the discretion of the current owner. No Open House has been scheduled for this sale.

**ATTACHMENT B**  
**TERMS AND REQUIREMENTS OF FORECLOSURE SALE - ACKNOWLEDGMENT BY BIDDER**

**PART I**

BID PRICE - The Undersigned, \_\_\_\_\_, (the "High Bidder") submits a bid of \_\_\_\_\_ dollars (\$) at the foreclosure sale of Shingle Creek Apartments (the "Project" or the "Property"), the legal description of which is included as Exhibit A, to be paid as follows:

1. \$ 75,000 in the form of a money order, certified check, or cashier's check, as the Earnest Money Deposit ("Earnest Money"), which has been submitted at the foreclosure sale to the Foreclosure Commissioner, and which shall not earn interest (the "Deposit"), **and**
2. \$ \_\_\_\_\_ the balance of the bid price ("sales price"), to be paid by the High Bidder at Closing, in the form of a money order, certified check, or cashier's check in accordance with this Terms and Requirements of Foreclosure Sale – Acknowledgment by Bidder ("Acknowledgment by Bidder"). The Closing will be held at a place, date and time established in accordance with Part II, paragraph 6 below (the "Closing").
3. In addition to the above, the High Bidder will be required to pay at Closing all closing costs, regardless of local custom, and, where applicable, deposits to reserve accounts and/or Letters of Credit, Cash Escrow, or Payments and Performance Bonds, as described in Riders incorporated herein, the Invitation for Bid ("Invitation"), and the Foreclosure Sale Use Agreement ("Use Agreement").

**PART II**

The High Bidder, by executing this document, acknowledges the following requirements as conditions of purchasing the Project:

1. **ACKNOWLEDGMENT OF TERMS:** High Bidder affirms to have full knowledge of all the terms, conditions and requirements contained in this Invitation, including this Acknowledgment by Bidder and documents referred to herein, the Invitation and attachments, the Use Agreement and Riders, and the Notice of Default and Foreclosure Sale. Bidder must execute this Acknowledgment by Bidder.
2. **EXECUTION OF USE AGREEMENT:** At Closing, High Bidder will, in addition to any other related documents, execute the Foreclosure Sale Use Agreement ("Use Agreement") and all of the Exhibits to the Use Agreement as contained in the Invitation. Such documents will control the use of the Project for a specified period, be recorded with the Deed, and run with the land.
3. **CERTIFICATION OF SUBSTANTIAL COMPLIANCE (Attachment F):** The High Bidder must provide Certification to HUD (**within two (2) Federal Government business days after the foreclosure sale**) that any other Projects that are owned by the High Bidder or its affiliates and are located in the same jurisdiction (city or town) as the Project are in substantial compliance with applicable state and/or local housing statutes, regulations, ordinances and codes. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the High Bidder. The complete and original Attachment F must be received by the Realty Specialist identified in the Property at a Glance. If HUD determines in its sole discretion that such other Projects are not in substantial compliance, HUD will have the right to refuse to sell the Project to the High Bidder and retain the Earnest Money Deposit.
4. **PREVIOUS PARTICIPATION CERTIFICATION:**
  - (a) **Within Two (2) Federal Government business days after the Foreclosure Sale:**  
The High Bidder must submit the Previous Participation Certification in **either electronic or paper form:**
    - (i) **Paper Form HUD-2530:**  
**High Bidder, if using paper form** (submittal) of the Previous Participation Certification (Form HUD 2530) , must submit the original and executed form, **complete with organizational chart**, to the Realty Specialist identified in the Property at a Glance, **or**
    - (ii) **Electronic Form HUD-2530:**
      - a. **High Bidder not registered in APPS and Secure Systems,** must submit certification that the Bidder has registered in APPS and Secure Systems. This certification must be submitted to the Realty Specialist identified in the Property at a Glance and can be in the form of a copy of the Participant Successfully Registered page from the APPS system **and** a copy of the Multifamily Coordinator and User Registration page from Secure Systems **or** a copy of the Participant Detail page. The High Bidder is also responsible for submitting any changes necessary for principals, tax ID, and ownership in the APPS system, **or**

- b. **High Bidder registered in APPS and Secure Systems**, must fax a copy of the Participant Detail page to the Realty Specialist identified in the Property at a Glance.

(See APPS User Guide-Industry, Chapter 16 for printing instructions).

- (b) **Within Ten (10) Federal Government business days after the Foreclosure Sale:**  
**If High Bidder is using a professional management company (Management Agent)**, the High Bidder is responsible for ensuring that the Management Agent submits the required Previous Participation Certification in **either electronic or paper form**:

- (i) **Paper Form HUD-2530:**

**Management Agent, if using paper form** (submittal) of the Previous Participation Certification (Form HUD 2530), must submit the original and executed form, **complete with organizational chart**, to the Realty Specialist identified in the Property at a Glance, **or**

- (ii) **Electronic Form HUD-2530:**

a. **Management Agent not registered in APPS and Secure Systems** must submit certification that the Management Agent has registered in APPS and Secure Systems. This certification must be submitted to the Realty Specialist identified in the Property at a Glance and can be in the form of a copy of the Participant Successfully Registered page from the APPS system **and** a copy of the Multifamily Coordinator and User Registration page from Secure Systems **or** a copy of the Participant Detail page). The High Bidder is also responsible for submitting any changes necessary for principals, tax ID, and ownership in the APPS system, **or**

b. **Management Agent registered in APPS and Secure Systems** must fax a copy of the Participant Detail page to the Realty Specialist identified in the Property at a Glance.

(see APPS User Guide-Industry, Chapter 16 for printing instructions.)

- (c) **Within Fifteen (15) Federal Government business days after the Foreclosure Sale:**  
**If High Bidder and/or Management Agent** elected to file the required Form HUD-2530 electronically (e2530) and did not submit the paper Form HUD-2530s within the time frames specified above, the High Bidder and/or Management Agent must electronically file the e2530 within fifteen (15) days of the foreclosure sale and fax a printed copy of the 2530 Submission Package to the Realty Specialist identified in the Property at a Glance. (See APPS User Guide-Industry, Chapter 16, for printing instructions.)

5. **WRITTEN STATEMENT OF EXPERIENCE:**

**All of the following required documentation must be submitted to HUD within five (5) Federal government business days of the date of the foreclosure sale.**

**Required Documentation:** Bidder must submit a written statement, to the Realty Specialist identified in the Property at a Glance, demonstrating generally five (5) years of experience in successfully owning and managing properties similar to the property being sold. The statement shall provide the following information for all similar properties to the property being sold, not to exceed three (3) specific examples. The written statement should not exceed five (5) pages per property.

- The location of other owned multifamily properties.
- The number of units and construction type (garden, walk-up, hi-rise) for each property.
- Identify properties that have government assistance and type of assistance, i.e., project-based assistance, tenant-based voucher assistance, etc.
- Identify the initial physical needs of each property and how they were addressed.
- Identify the social needs of each property and how they were addressed.
- Identify the economic needs of each property and how they were addressed.

For the Property being sold, provide the following documentation:

- Describe how Bidder will satisfy conditions of the sale, i.e., repair program, income and rent limitations, etc.
- Describe how Bidder will implement a sound financial and physical management program for the Property.
- Describe Bidder's methods for responding to the needs of the tenants and working cooperatively with resident organizations.
- Describe how Bidder will provide adequate organizational staff and financial resources to the property.
- Provide statement of services, maintenance and utilities which Bidder will provide to property.
- Provide a statement disclosing government assistance to be utilized.

Based on the required documentation set forth above, as well as any additional information independently obtained and verified by the Department, HUD will determine whether the Bidder has the requisite experience, qualifications and financial capacity to purchase the Property. This determination is a matter within HUD's sole and absolute discretion. If HUD determines that the Bidder does not have the experience, qualifications and/or financial capacity to purchase the Property, HUD will reject the bid and proceed to the next highest Bidder pursuant to the terms of the Invitation to Bid.

6. **ESTABLISHMENT OF CLOSING DATE, TIME AND PLACE:**

- (a) Time is of the essence.
- (b) HUD will notify the High Bidder and the Foreclosure Commissioner in writing after HUD determines that the High Bidder has been approved to purchase the Property. Approval to purchase is subject to review and approval of Bidders' written statements and HUD forms as required for purchase in Section 4 (Post

Foreclosure Sales Procedures) of the Invitation, and in Attachment B, Terms and Requirements of Foreclosure Sale – Acknowledgment by Bidder, specifically Part II, paragraph 20. The Closing **shall be within thirty (30) days of such notification**, unless extended pursuant to paragraph 11 below.

- (c) The Foreclosure Commissioner will establish a time and date for the Closing. The Closing will take place at a site agreed upon between HUD and the Commissioner.

7. CLOSING, CLOSING EXPENSES AND TRANSFER OF POSSESSION:

- (a) The sale shall be effective upon Closing.  
(b) High Bidder/Purchaser shall pay all closing costs and expenses, excluding fees for recording the Deed and Use Agreement, irrespective of local custom. Recording fees shall be paid by HUD.  
(c) Transfer of title and possession of the Project shall become effective as of the Closing date.

8. PAYMENT OF BID PRICE AT CLOSING: The High Bidder/Purchaser shall pay the balance of the bid price (sales price) at Closing in the form of a money order, certified check or cashier's check made payable to:

**THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

9. REPAIR ESCROW: At Closing the High Bidder/Purchaser shall submit to HUD:

- ☒ An unconditional, irrevocable and non-documentary Letter of Credit (LoC), in the amount of \$ 25,000, which shall remain in effect and may be drawn on by the Secretary for at least eighteen (18) months, 6 months past the deadline for repairs stated above, from the date of this Agreement.  
☐ A cash escrow in the amount of \$ \_\_\_\_\_, to be held by HUD in a non-interest bearing escrow account. The cash escrow will be returned to the Purchaser after repairs have been satisfactorily completed, except for ten (10) percent which will be held for an additional six (6) months.

10. LIQUIDATED DAMAGES: Should the High Bidder/Purchaser fail or refuse to perform all obligations under the Invitation (which includes this Acknowledgement by Bidder) for any reason including, but not limited to, failure to establish the legal entity that is to take title in a timely manner that permits Closing within the deadline set forth in paragraph 6, the Earnest Money Deposit and any Extension Fees, paid under paragraph 11, shall be retained by HUD as liquidated damages.

11. EXTENSION FEES: The granting of extensions of time to close the sale is within HUD's sole and absolute discretion. Any extension, if granted, will be on the following conditions:

- (a) A written request for an extension must be received at the HUD office indicated below within fifteen (15) days prior to the prescribed Closing date, or within any extension period and **must be accompanied by the payment** of the required extension fee. The request must state the reason for Bidder's inability to close the sale within the initial period or any extended period.

Fort Worth Multifamily PD Center  
Attn: Scott R. Bearden, Director  
801 Cherry Street, Unit #45, Ste. 2500  
Fort Worth, TX 76102

- (b) Extensions shall be for thirty (30) days.  
(c) For each thirty (30) day period requested by High Bidder/Purchaser and approved by HUD, extension fees shall be equal to;  
(i) \$ 26.35, per unit, per day, which is \$ 3,214.70 daily, a cost of \$ 96,441.00, which covers the 30-day period (the holding cost for such period), **or**  
(ii) one and one-half percent (1.5%) of the bid price, whichever is greater.  
(d) The Extension Fees shall be retained by HUD and shall not be credited to the amount due from High Bidder/Purchaser at Closing. However, if the sale closes prior to the expiration of an extension period, the prorated amount of the Extension Fee, for the unused portion of the extension period, shall be credited toward the amount due from High Bidder/Purchaser at Closing.  
(e) The granting of one or more extensions shall not obligate HUD to grant additional extensions.  
(f) If any form or instrument required by HUD is not submitted within sufficient and reasonable time for HUD's review or processing and such delay necessitates an extension of the Closing deadline, an Extension Fee must be paid for this period.  
(g) Extension Fees must be submitted by money order, certified check or cashier's check acceptable to HUD.

12. BIDDER RESTRICTIONS:

- (a) **Bidding at the foreclosure sale is limited to 501 (c) 3 non-profits and governmental entities that have long-term experience with affordable housing in the State of Minnesota. Non-profit bidders are required to submit to the Foreclosure Commissioner: 1) evidence of their position in the organization which includes a notarized designation of authority to bid at the sale; and 2) a Certificate of Good Standing for the non-profit organization.**  
(b) No Member of/or Delegate to Congress, resident commissioner, or local elected official, shall be admitted to any share or part of this sale, or to any benefit arising from it. However, this provision

does not apply to this sale to the extent that this sale is made with a corporation for the corporation's general benefit.

- (c) If Bidder is, or becomes suspended, debarred, or temporarily denied from participating in HUD programs prior to Closing, this sale shall be terminated. In addition, if such suspension, debarment or temporary denial of participation occurs either before or after Bidder's execution of this Acknowledgment, any extension fees paid under paragraph 11 shall be retained by HUD as liquidated damages.
- (d) Pursuant to 24 CFR Part 27.20(f), the defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the Project being foreclosed by the Department under this subpart or any other provision of law. A "principal" and an "affiliate" are defined as provided at 24 CFR 200.215.

13. AS-IS SALE; NO REPRESENTATIONS:

- (a) High Bidder/Purchaser shall accept the Project "as is." HUD makes no representations or warranties concerning the physical condition of the Project. In addition, HUD does not represent or warrant the number and occupancy of revenue producing units, or any factor bearing upon the value of the Project.
- (b) Bidder acknowledges that the bid price (sales price) set forth in this Acknowledgment is based on Bidder's evaluation of the Project and not upon any representations by HUD. Bidder's failure to inspect, or to be fully informed as to any factor bearing upon the valuation of the Project, shall not affect the liabilities, obligations or duties of HUD, nor be a basis for termination of this sale or for the return of any Earnest Money Deposit or Extension Fees paid to HUD.

14. RISK OF LOSS AND RIGHTS OF RESCISSION: In the event of any substantial damage to the Project prior to Closing by any cause including, but not limited to, fire, flood, earthquake, tornado and significant vandalism other than willful acts or neglect, HUD, in its sole discretion, may negotiate with the Bidder for a reduction in the bid price corresponding to the estimated amount of damages. Such amount shall be added to a Post-Closing repair requirements, Form HUD – 9552, and attached to the Use Agreement. If HUD fails to negotiate a bid price reduction or if the High Bidder/Purchaser and HUD are unable to agree on the amount by which the bid price should be reduced or on the amendment to the repair requirements, High Bidder/Purchaser may withdraw the bid. In such case, HUD will return the Earnest Money Deposit and any Extension Fee(s) paid, *unless* there is cause to retain the Earnest Money Deposit based on breach of the Invitation and/or Acknowledgment by Bidder.

15. PRORATIONS:

- (a) High Bidder/Purchaser is responsible for paying all outstanding assessments, real estate and property taxes, utility bills including, but not limited to water/sewer, gas and electric which are not extinguished by the foreclosure. These costs will not be prorated. However, if Extension Fees were paid and if the sale closes prior to the expiration of an extension period, a prorated amount of the Extension Fees, for the unused portion of the extension period, shall be credited toward the amount due from High Bidder/Purchaser at Closing. The High Bidder/Purchaser will be responsible for expenses incurred by the Project after Closing. *Bidders are required to determine outstanding expenses/assessments/liens as part of its due diligence and take those outstanding expenses into consideration when submitting bids.*
- (b) The High/Bidder/Purchaser is responsible for paying in full all taxes that come due after Closing. Taxes paid by the Purchaser after the Closing date will not be prorated, even if those taxes are for a period prior to Closing.

16. SECURITY DEPOSITS: APPLICATION AS CHECKED:

- ☒ Notwithstanding state or local law, the High Bidder/Purchaser will receive only those security deposits which are on hand at the Project on the date of Closing. The High Bidder/Purchaser will assume all liability under state and local law with respect to security deposits.
- ☐ Any security deposits collected from tenants and paid to HUD prior to the Closing shall be assigned to High Bidder/Purchaser within fifteen (15) Federal Government business days after the Closing, with the exception of security deposits forfeited by the tenant in accordance with the terms of the tenant's lease. Notwithstanding state and local law, no other security deposits collected from tenants will be transferred by HUD to High Bidder/Purchaser. HUD has no other liability under state and local law with respect to security deposits. High Bidder/Purchaser agrees to assume all responsibility and liability under state and local law with respect to the collection, application and return of security deposits.

17. LIMITATION OF LIABILITY: In no event shall HUD's liability exceed the portion of the bid price that has been paid to HUD.

18. ANTI-COLLUSION CERTIFICATION:

- (a) The High Bidder/Purchaser certifies:
  - (i) The bid price in this offer has been arrived at independently, without (for the purposes of restricting competition) any consultation, communication, or agreement with any other Bidder relating to:
    - a. the bid price;
    - b. the intention to submit a bid price; or
    - c. the methods or factors used in calculating the bid price offered.
  - (ii) The bid price in this offer has not been and will not be knowingly disclosed by the High Bidder,

directly or indirectly, to any other High Bidder or competitor before or during the actual time of the bid event, unless otherwise required by law; **and**

- (iii) No attempt has been made or will be made by the High Bidder to induce any other Bidder to submit or not to submit a bid price for the purpose of restricting competition.
- (b) If the bid procedure requires or permits written bids, each signature on the offer is considered to be certification by the signatory that the signatory:
  - (i) Is the person in the Bidder's organization responsible for determining the bid price being offered in this bid and that the signatory has not participated and will not participate in any action contrary to paragraph (a) above; **or**
  - (ii) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraph (a), above;

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization responsible  
for determining price \_\_\_\_\_

- a. As an authorized agent, does certify that the principals named in the above have not participated, and will not participate, in any action contrary to paragraph (a) above; **and**
- b. As agent, has not personally participated, and will not participate, in any action contrary to paragraph (a) above.

19. **FAILURE TO COMPLY:** Upon the failure or refusal of the High Bidder to comply with any of the requirements listed above or elsewhere in this Invitation, HUD may declare the Bidder ineligible to purchase the Project. In which case High Bidder shall forfeit the Earnest Money Deposit and any Extension Fees paid.

**HUD reserves the right to review, approve or reject the proposed management.** If HUD determines that the High Bidder is not qualified to self-manage the Project, HUD, in its sole discretion, may either reject the bid or require the High Bidder to obtain the services of a property management firm satisfactory to HUD. If HUD chooses the later, the High Bidder must provide HUD with evidence that a qualified property management firm has been retained. If High Bidder does not meet this obligation, HUD reserves the right to reject the bid and retain the High Bidder's Earnest Money Deposit and any Extension Fees paid.

20. **REQUIRED STATEMENTS AND FORMS:**

**Not later than five (5) Federal Government business days** after oral notification at the foreclosure sale of being the High Bidder, the Bidder must demonstrate the ability to meet HUD requirements for purchase of the Project by submitting the Written Statement as provided in Part II, paragraph 5 above, to the Realty Specialist identified in the Property at a Glance.

**Not later than ten (10) Federal Government business days** after oral notification at the foreclosure sale of being the High Bidder, the Bidder must demonstrate the ability to meet HUD requirements for purchase of the Project by submitting the documents checked below to the Realty Specialist identified in the Property at a Glance:

- ☒ Previous Participation Certification (Form HUD-2530) for purchasing entity, if different from the bidding entity (Refer to Invitation, Sections 2 and 4 and the Acknowledgment by Bidder, Part II, paragraph 4, "Previous Participation Certification" for more information)
- ☒ Previous Participation Certification (Form HUD-2530) for the Management Agent, if applicable (Refer to Invitation, Sections 2 and 4 and the Acknowledgment by Bidder, Part II, paragraph 4, "Previous Participation Certification" for more information)
- ☒ Personal Financial and Credit Statement (Form HUD-92417), for each proposed principal/general partner
- ☒ Management Entity Profile (Form HUD-9832)
- ☒ Project Owner's Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839A)
- OR**
- ☒ Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity-of-Interest or Independent Management Agents (Form HUD-9839B)

**(Only one of the Forms, 9839 A, or B, will be required for management certification)**

**NOTICE:** It is the High Bidder's responsibility to ensure compliance with form and document submission as required in Part II, paragraph(s) 3, 4, 5 and above in this paragraph. Failure to submit or comply with any requirements of the Invitation or Acknowledgement may result in Bidder being declared ineligible to purchase the Project. In such case the Bidder shall forfeit the Earnest Money Deposit and any Extension Fees paid.

All forms and instruments referred to in this Acknowledgment are standard HUD forms and instruments prepared by HUD, used by HUD in the jurisdiction in which the Project is located and contain any additional covenants and conditions required by the Invitation.

21. **SEVERABILITY** - If for any reason one or more of the provisions contained in the Invitation, including this Acknowledgment, the Use Agreement, or any other attachments or exhibits thereto, shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other

provision(s) of the Invitation, but the Invitation shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included therein.

22. RIDERS TO THE USE AGREEMENT:

The High Bidder acknowledges the receipt of the Use Agreement applicable to this Project's sale and the inclusion of the following Riders to that Use Agreement:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Equity Participation  | <input checked="" type="checkbox"/> Required Rehabilitation, Repair Escrow, Relocation |
| <input checked="" type="checkbox"/> Affordability of Units  | <input checked="" type="checkbox"/> Lead-Based Paint Hazards                           |
| <input checked="" type="checkbox"/> Two-Year Rent Protection for Pre-Existing Very Low-Income Tenants                       | <input checked="" type="checkbox"/> Asbestos Hazards                                   |
| <input checked="" type="checkbox"/> Nondiscrimination Against Multifamily Section 8 Certificate Holders and Voucher Holders | <input checked="" type="checkbox"/> Mold Hazards                                       |

23. EXECUTION

- (a) By signature below, High Bidder indicates acknowledgment of and agreement to the terms and requirements of this foreclosure sale.
- (b) In the case of a bid submitted by an agent or representative of the High Bidder, the signatory attests to be duly authorized to submit the bid on behalf of the High Bidder and to execute this Acknowledgment.

**WARNING:** It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

Executed by the Bidder on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, ST Zip: \_\_\_\_\_

Phone No. with Area Code: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_



**ATTACHMENT C**  
**FORECLOSURE SALE USE AGREEMENT**

This Agreement is entered into by \_\_\_\_\_ ("Purchaser") and the Secretary of Housing and Urban Development ("Secretary" or "HUD").

WHEREAS, pursuant to the Act and to provisions of 12 U.S.C. Section 1715z-11a(a), and the Department of Housing and Urban Development regulations thereunder at 24 CFR Part 290, the Secretary has authority to impose certain use restrictions, as set forth in this Agreement, on the property subject to a mortgage held by the Secretary that is sold at foreclosure to a purchaser other than HUD; **and**

WHEREAS, pursuant to the provisions of the Multifamily Mortgage Foreclosure Act, 12 U.S.C. Sections 3701 et seq. (the "Act"), and the Department of Housing and Urban Development's regulations thereunder at 24 C.F.R. Part 27, the Secretary has elected to exercise the nonjudicial power of sale provided under the Act, or pursuant to a judicial foreclosure the Secretary has elected to apply Section 367(b) of the Act, with respect to Shingle Creek Apartments, HUD Project No. 092-35634, (the "Project" or the "Property") a legal description of which is attached as Exhibit "A"; **and**

WHEREAS, by Deed executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Project has been conveyed to the Purchaser; **and**

NOW THEREFORE, in consideration of the mutual promises set forth herein and in further consideration of the sale of the Project to the Purchaser, the parties agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect,  
☒ Thirty (30) years from the date of this Agreement.
2. **CONVEYANCE:** During the term of this Use Agreement, any conveyance of the Project must have prior written approval of HUD. Any request for HUD's approval of conveyance must include the entity and all principals obtaining Previous Participation Certification approval (clearance), submission of a signed Certification of Substantial Compliance, and a signed Agreement to Abide by Use Agreement. HUD's approval of conveyance will be based on information provided in written statements of how the Purchaser, or any subsequent Purchaser, in consideration of any and all existing use restrictions, will:
  - (a) Implement and/or continue to comply with all existing use restrictions.
  - (b) implement sound financial and physical management program;
  - (c) respond to the needs of the residents and work cooperatively with resident organizations;
  - (d) provide adequate organizational staff and resources to manage the Project; and
  - (e) provide evidence of a minimum of five years substantive experience owning and managing multifamily properties of similar size and complexity.

Conveyance is defined as any sale, assignment, transfer, leasehold estate, or conveyance of the property or any ownership interest. In addition, a merger, conversion, share exchange, long term leasehold estate, interest exchange of corporate or partnership interest is also considered a transfer/conveyance of the property and require prior written approval from HUD.

The preceding provisions shall be applicable and in full force and effect notwithstanding that any applicable statutory law or case decision provide that any such merger or conversion or share (or interest) exchange, or leasehold estate transaction does not constitute or involve the occurrence of a "transfer" or "assignment" of real estate interest or other assets of a constituent party to any such transaction.

3. **PROJECT MANAGEMENT:** HUD reserves the right to approve management for the property during the term of this Agreement. Any proposed property manager must demonstrate a minimum of five years substantive experience managing subsidized multifamily properties of similar size and complexity.

Any change in management of the project must have HUD's prior written approval. Any request for HUD's approval of the proposed purchaser's/owner's management of the property must include the entity and all principals obtaining Previous Participation Certification approval (clearance) and the proposed management agent for the property must submit for HUD's review and approval the following documents/forms:

- Management Entity Profile (Form HUD-9832),
- Project Owner's Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839A) **or**
- Project Owner's/Management Agents Certification for Multifamily Housing Projects for Identity-of-Interest (Form HUD-9839B), **or**
- Project Owner's/Borrower's Certification - for elderly housing project managed by Administrators only (Form HUD-9839C).

**(Only one of the Forms 9839 A, B or C will be required for management certification.)**

4. **SUBJECT TO EXAMINATION:** If used as rental housing, the Project shall at all times,
  - (a) Be maintained in decent, safe and sanitary condition and in good repair to the greatest extent possible,
  - (b) Maintain full occupancy to the greatest extent possible,
  - (c) Be maintained as rental housing for the term of this Agreement, and
  - (d) Be subjected to periodic HUD inspections or inspections under REAC protocol (24 CFR parts 5 and 200).

The Purchaser shall be obligated to provide annual financial statements to HUD (24 CFR parts 5 and 200).

At the request of the Secretary, Purchaser must supply evidence by means of occupancy reports, physical condition reports, reports on operations, or any evidence as requested to ensure that the above requirements are being met.

5. **UNIT NUMBER OR USE CHANGE** - Changes to the use, number, size, or configuration of residential units in the Project; e.g., apartment units, beds in a care facility, from the use as of the date of this Agreement, must receive the written prior approval of HUD.
6. **NON-DISCRIMINATION REQUIREMENTS** - The Purchaser will comply with the provisions of all federal, state, or local laws prohibiting discrimination in housing.
7. **HAZARD INSURANCE** - Hazard insurance shall be maintained in an amount to ensure that the Purchaser is able to meet the rental housing requirements described in this Agreement.
8. **DESTRUCTION OF PROJECT** - In the event that any or all of the Project is destroyed or damaged by fire or other casualty, the money derived from any insurance on the Project shall be applied to rebuild or replace the property destroyed or damaged, unless the Secretary gives written approval to use insurance proceeds for other purposes.
9. **DEMOLITION OF PROJECT PROPERTY** - The Purchaser will not demolish any part of the Project or withdraw any part of the Project from use (except as temporarily necessary for routine repairs), without the prior written approval of HUD.
10. **REMEDIES FOR NONCOMPLIANCE** - Upon any violation of any provision of this Agreement by the Purchaser, HUD may give written notice thereof to the Purchaser by registered or certified mail, addressed to the address stated in this Agreement, or such other address as subsequently, upon appropriate written notice thereof to the Secretary may be designated by the Purchaser as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this Agreement and may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, and/or such other relief as may be appropriate, since the injury to the Secretary arising from a default of the terms of the Agreement would be irreparable and the amount of damage would be difficult to ascertain.

The availability of any remedy under the Agreement shall not preclude the exercise of any other remedy under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not construe a waiver of the right to exercise that or any other right or remedy at any time.
11. **SUCCESSORS AND ASSIGNS** -This Agreement is binding upon the Purchaser's heirs, successors and assigns. The Purchaser agrees that if title to the Project is conveyed during the term of this Agreement, the Purchaser will require its purchaser to assume in writing its obligations under this Agreement.
12. **RESTRICTIONS** - No Member of Congress or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of the benefits of the Use Agreement, but this provision shall not be construed to extend to this Use Agreement if the Use Agreement is made with a corporation for its general benefit.
13. **CONTRADICTORY AGREEMENTS** - The Purchaser certifies that it has not, and agrees that it will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this agreement, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict with this Agreement.
14. **SEPARABILITY** - The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.
15. **AMENDMENT** - This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute.

16. **RIDERS TO THE USE AGREEMENT** - The Riders checked and initialed by the parties are attached to and incorporated into this Use Agreement and will be placed in the Deed to run with the land.

☒ Equity Participation

☒ Affordability of Units

☒ Two-Year Rent Protection for Pre-Existing Very Low-Income Tenants

☒ Nondiscrimination against Multifamily Section 8 Certificate Holders and Voucher Holders

☒ Required Rehabilitation, Repair Escrow, Relocation

☒ Lead-Based Paint Hazards

☒ Asbestos Hazards

☒ Mold Hazards

17. **PRIORITY** – This foreclosure Use Agreement shall be recorded against the property in a superior position to any post foreclosure liens or mortgage debts.

IN WITNESS WHEREOF:

The Purchaser has executed this Use Agreement \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

PURCHASER:

\_\_\_\_\_

By: Signature

\_\_\_\_\_

Typed Name of Purchaser

Street Address

City, State, Zip Code

The U.S. Department of Housing and Urban Development (HUD) has executed this Use Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

FOR: THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

\_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_

Official's Typed Name

Title

Exhibit A  
Legal Description

The real property located in Hennepin County, Minnesota, legally described as follows:

Tract A, Registered Land Survey No. 1359. Together with common driveway and pedestrian use easements contained in Document 1429165 and 1098796.

LEGAL DESCRIPTIONS ARE PROVIDED AS INFORMATION ONLY. INTERESTED PARTIES MUST ASCERTAIN LEGAL DESCRIPTIONS THROUGH THEIR OWN DUE DILIGENCE.

RIDER 1 OF 8  
**EQUITY PARTICIPATION**

The Use Agreement includes the following provisions:

1. If the Purchaser (which includes, without limitation, any/all successors, assigns or transferee of Purchaser) sells, assigns, transfers or conveys the Property or any interest therein, and/or any interest in the ownership entities that comprise the Purchaser, directly or indirectly (collectively, a "Sale"), the Sale proceeds, less any expenses incurred by the Purchaser, as approved by HUD and which are not funded by a grant, consisting of:
  - Reasonable transaction costs;
  - Purchase price ;
  - Amounts paid previously by Purchaser to HUD under paragraph 2 of this Rider subsequent to the transfer of the Property from HUD to Purchaser;
  - Costs of renovation and rehabilitation, other than routine maintenance and repairs; and
  - Low Income Housing Tax Credit equity less any Developer fee paidshall be assigned to HUD in the following amounts:
  - (a) between the date of the Use Agreement and five (5) years from the date of the Use Agreement, one hundred (100%) percent; **and**
  - (b) between five (5) years, one (1) day and fifteen (15) years from the date of the Use Agreement, seventy-five percent (75%); **and**
  - (c) between fifteen (15) years, one (1) day and twenty-five (25) years from the date of the Use Agreement, fifty percent (50%); **and**
  - (d) between twenty-five (25) years, one (1) day and thirty (30) years from the date of the Use Agreement, twenty-five percent (25%); **and**
  - (e) over thirty years, zero percent (0%).
2. Purchaser (which includes, without limitation, any/all successors, assigns or transferee of Purchaser), shall not refinance the Property or any interest therein, or encumber or refinance any interest in the ownership entities that comprise Purchaser, directly or indirectly, including without limitation the placement of any debt secured by the Property (a "Refinancing"), without the written consent of HUD. HUD may condition such consent on, among other things, the proceeds from the Refinancing being paid to HUD in the manner provided in Section 1, (a) - (e) above, less expenses incurred by Purchaser consisting of:
  - Reasonable transaction costs;
  - Mortgage debt paid off by the Refinancing;
  - Amounts paid previously by Purchaser to HUD under paragraph 2 of this Rider subsequent to the transfer of the Property from HUD to Purchaser;
  - Costs of renovation and rehabilitation, other than routine maintenance and repairs; and
  - Low Income Housing Tax Credit equity less any Developer fee paid.
3. Purchaser shall keep or cause to be kept, accurate records of account of any Sale or Refinancing and of the cost of renovation and rehabilitation. HUD, its agents or contractors, during Purchaser's normal working hours, shall have the right to enter and have free access to inspect all books and records of Purchaser. Upon the written request of HUD, Purchaser shall retain an independent certified public accountant to prepare an accounting of any Sale, Refinancing, or cost of renovation or rehabilitation.
4. A merger, conversion, share exchange, interest exchange of corporate or partnership interest in the entity owning the Property is also a Sale and requires the approval of HUD and shall be subject to the provision of the above paragraph 1.
5. The preceding provisions shall be applicable and in full force and effect notwithstanding that any applicable statutory law or case decision provides that any such merger or conversion or share (or interest) exchange transaction does not constitute or involve the occurrence of a "transfer" or "assignment" of a real estate interest or other assets of a constituent party to any such transaction.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER\_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT\_\_\_\_\_

RIDER 2 OF 8  
**AFFORDABILITY OF UNITS**

The Use Agreement includes the following provisions:

**Use Restriction**

1. The Purchaser (Owner) must maintain the property as affordable rental housing for a period of thirty (30) years after the date of this Use Agreement or such earlier time as the Secretary may specify in writing (the "Restricted Period").
2. Any change to the number or configuration of residential units required to be maintained, as affordable rental housing must receive prior written approval from HUD.
3. The Purchaser (Owner) shall not unreasonably refuse to lease a dwelling unit to, or discriminate against, a prospective tenant because the tenant is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC Section 1437f); nor shall the Purchaser (Owner) unreasonably refuse to lease a dwelling unit to, or discriminate against, very low-income families.
4. The Purchaser (Owner) shall maintain the property in a condition that is decent, safe, and sanitary, and in good repair. It shall do so in conformity with HUD requirements at 24 CFR Part 5, Subpart G, or any successor regulation.
5. The Purchaser (Owner) shall comply with HUD financial reporting requirements at 24 CFR Part 5, Subpart H, or any successor regulation.
6. For three (3) years after the date of this Use Agreement or such earlier time as the Secretary may specify in writing, the Purchaser (Owner) shall not evict or terminate the tenancy of an existing tenant other than for good cause.
7. For three (3) years after the Date of this Use Agreement, or such earlier time as the Secretary may specify in writing, the Purchaser (Owner) shall not increase the gross rent above the maximum allowed under the Code (Section 42 of the Internal Revenue Code of 1986) with respect to such low-income unit. Low income unit is defined in the "Amended and Restated Declaration of Land Use Restrictive Covenants for Housing Tax Credit 2003 Allocation Year" filed with the Office of the Registrar of Titles, Hennepin County, Minnesota on November 3, 2004, document number 4037617.

**Eligibility Requirement at Initial Occupancy**

The Purchaser (Owner) will affirmatively market 23 dwelling units to families with adjusted gross annual income that does not exceed eighty percent (80%) of the area median income, adjusted for family size.

The Purchaser (Owner) will affirmatively market 99 dwelling units to very low-income families with adjusted gross annual income that does not exceed fifty percent (50%) the area median income, adjusted for family size.

If the Purchaser (Owner) is temporarily unable to lease all of the specified number of dwelling units to very low-income families, one or more units may be leased to families who are low-income but not very low-income, only with HUD's prior written approval. In requesting such approval, the Purchaser (Owner) must demonstrate that:

1. reasonable steps have been taken to attract very-low income families, including using marketing activities most likely to attract such eligible applicants, **and**
2. has leased or is making good-faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families, **and**
3. has not rejected any such applicants except for reasons acceptable to HUD.

**Maintenance of Rents at Affordable Levels**

1. For current tenants, affordable means **the least of:**
  - a. for a unit occupied by a very-low income family, the unit rent does not exceed thirty percent (30%) of fifty percent (50%) of the area median income, not necessarily the income of the family, as determined by HUD, with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; **or**
  - b. for a unit occupied by a low-income family that is not a very low-income family, the unit rent does not exceed thirty percent (30%) of eighty percent (80%) of the area median income, (not necessarily the income of the family, as determined by HUD,

with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; **or**

- c. the Section 8 Voucher Payment Standard less the utility allowance established by the voucher provider; **or**
- d. Market Rent in the immediate area established by a rent comparability study prepared, at the Purchaser's (Owner's) expense, in accordance with HUD requirements.

2. For **new or turnover** tenants, affordable means **the least of:**

- a. for 99 dwelling units, the unit rent cannot exceed thirty percent (30%) of fifty percent (50%) of the area median income, not necessarily the income of the family, as determined by HUD, with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant. **And**, unless prior written approval has been obtained from HUD, the unit rent for the additional 23 dwelling units cannot exceed thirty percent (30%) of eighty percent (80%) of the area median income, not the income of the family, as determined by HUD, with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; **or**
- b. the Section 8 Voucher Payment Standard, less the utility allowance established by the voucher provider; **or**
- c. Market Rent in the immediate area established by a rent comparability study prepared, at the Purchaser's (Owner's) expense, in accordance with HUD requirements.

**Annual certification**

The Purchaser (Owner) shall certify to HUD annually, in a manner acceptable to HUD, that the requirements in the above paragraphs have been fulfilled.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_



RIDER 3 OF 8  
**TWO-YEAR RENT PROTECTION FOR PRE-EXISTING VERY LOW-INCOME TENANTS**  
(Applies to rental housing not covered by a HAP Contract)

The Use Agreement includes the following provisions:

To ensure compliance with Section 203(g) of the Multifamily Housing Property Disposition Reform Act of 1994 (the "Act"), the Purchaser agrees that, for any very low-income family (as defined in 24 CFR 5.603) which is a pre-existing tenant of an unassisted project as defined in the Act and which would be required to pay rent in an amount in excess of thirty percent (30%) of its adjusted income (as defined in 24 CFR 5.611), for a period of two (2) years beginning upon the date of acquisition of the project by the Purchaser:

1. the rent payable by any very low-income family which, on that date, is paying over thirty percent (30%) of its adjusted annual income for rent shall not exceed the amount being charged on that date; **and**
2. the rent payable by any very low-income family which is paying thirty percent (30%) or less of the families' adjusted annual income for rent, shall not be subject to any rent increase which would require the family to pay more than thirty percent (30%) of its adjusted annual income.

For all tenants covered by these provisions, the Purchaser must include in the leases the terms and conditions of the two (2) year rent protection including a provision for an initial tenant income certification and not more than one tenant income certification a year, except upon reduction of tenant income or upon tenant request.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER\_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT\_\_\_\_\_

**NONDISCRIMINATION AGAINST MULTIFAMILY SECTION 8 CERTIFICATE HOLDERS AND VOUCHER HOLDERS**

(Applies to Rental Housing not covered by a HAP Contract)

The Use Agreement includes the following provisions:

Nondiscrimination

In order to comply with Section 204 of the Housing and Community Development Amendments of 1978, 12 USC §1701z-12, as amended, the Purchaser, any/all successors and assigns, agrees not to unreasonably refuse to lease a dwelling unit offered for rent, offer or sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC §1437f), or any successor legislation (hereinafter referred to as Section 8). This provision is limited in application, for tenants or applicants with Section 8 Certificates or Vouchers, to those units that rent for an amount not greater than the Section 8 fair market rent for a comparable unit in the area as determined by HUD.

If the Purchaser breaches this provision, HUD and/or one or more third - party beneficiaries, shall be entitled to institute legal action to enforce performance and observance of such provision and to enjoin any acts which are in violation of such provision. For the purposes of this provision, a third-party beneficiary shall be any person who holds a Certificate of Family Participation or a Voucher under Section 8 or any equivalent document under successor legislation.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER\_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT\_\_\_\_\_

RIDER 5 OF 8  
**REQUIRED REHABILITATION  
REPAIR ESCROW  
RELOCATION**

The Use Agreement includes the following provisions:

Rehabilitation

1. The Purchaser covenants that the Property will be rehabilitated within twelve (12) months from the date of this Use Agreement in accordance with all applicable state and local laws, codes, ordinances and regulations, and Physical Condition Standards pursuant to 24 CFR Part 5, and other requirements set forth in any repair summaries and narratives, attached hereto.
  - (a) If the Purchaser cannot complete the repairs within the required time, thirty (30) days prior to the expiration of the time allowed a written request for an extension must be delivered to HUD stating the reason for the Purchaser's inability to complete the repairs.
  - (b) The granting of one or more extensions shall not obligate HUD to grant additional extensions.
  - (c) Extensions of time to complete repairs are within HUD's sole and absolute discretion.
2. The Purchaser covenants not to increase the rent for any unit, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the rehabilitation requirements set forth in paragraph 1, above.
3. If the Purchaser fails to comply with paragraph 1 above, and no extension by written agreement has been granted by HUD, the Secretary and/or any and all successors in the office shall be entitled to:
  - (a) Enter and terminate the estate hereby conveyed, or
  - (b) Cash the Purchaser's LoC(s), or withdraw remaining funds from the cash escrow account and apply the funds to perform or correct such work, or for such purposes as HUD deems appropriate, or
  - (c) Request payment of performance under any payment and/or performance bond.These rights and remedies may be exercised separately or in combination.
4. If the Purchaser fails to repair the Project in accordance with this Agreement, the Secretary will not exercise the remedies as described in paragraph 3 above, if any lender holding a lien or security interest on the Project:
  - (a) Gives written notice to HUD within the period provided for repairs, that it intends to complete the repairs, **and**
  - (b) Completes such repairs within thirty (30) days of the notice or within such longer periods as HUD may approve in writing.

Repair Escrow

To ensure completion of required repairs that are to be completed by the Purchaser, the Purchaser must deliver to the Secretary at Closing, either a Letter of Credit or Cash Escrow as indicated below. (It is within HUD's sole discretion to allow one LoC, multiple LoC's or a Cash Escrow and to allow replacement of any/all LoC's with a Payment and Performance Bond):

☒ Letter of Credit:

1. An unconditional, irrevocable and non-documentary Letter of Credit (LoC), in the amount of \$ 25,000, which shall remain in effect and may be drawn on by the Secretary for at least eighteen (18) months, 6 months past the deadline for repairs stated above, from the date of this Agreement.
2. Significant repair/rehabilitation programs may be staged upon HUD approval. If repair/rehabilitation is staged, as agreed upon between the Bidder and HUD prior to Closing, up to five (5) LoCs, which represent the full LoC requirement, may be permitted. The LoCs must have an expiration date that extends beyond HUD's repair completion date by at least six (6) months. LoCs may be returned as the Bidder completes repairs and HUD has inspected and accepted the repairs. The final LoC must represent at least ten percent (10%) of HUD's total estimated repair costs and must have an expiration date that extends six (6) months beyond the completion of repair date. HUD may cash any or all LoCs and apply the funds to complete the repairs, correct latent defects in the completed repairs or retain the funds as liquidated damages.

☐ Cash Escrow

A cash escrow in the amount of \$ \_\_\_\_\_, to be held by HUD in a non-interest bearing escrow account. The cash escrow will be returned to the Purchaser after repairs have been satisfactorily completed, except for ten (10) percent which will be held for an additional six (6) months. HUD may apply the cash escrow funds to complete the repairs, correct latent defects in the completed repairs or retain the funds as liquidated damages.

☐ Payment and Performance Bonds

**After Closing** the Purchaser may, at HUD's discretion, replace the LOC(s) with Performance and Payment Bonds meeting state and local codes as assurance of completion for post-closing repair requirements, as listed on Form HUD-9552 and its exhibits, or Form HUD 9822.

Purchaser must use HUD Form-92452 for the payment bond and a form for the performance bond that is acceptable to HUD.

- (a) Evidence of the existence of payment and performance bonds each in the amount of \$\_\_\_\_\_ (the total cost of repairs) must be provided to HUD.
- (b) Purchaser must follow the following requirements:
  - i. The surety entity issuing the bonds must be included on the accredited U.S. Treasury list, Circular 570, published annually in the Federal Register on or about July 1 of each year;
  - ii. The payment and performance bonds must not exceed limits listed in the Circular;
  - iii. The payment and performance bonds must show HUD as payee, along with Purchaser's mortgagee, at the mortgagee's request.

**In the event an extension for completion of repairs is granted**, the LoC's, Cash Escrow account, or Payment and Performance Bonds will be extended accordingly.

**If the repairs are not completed to the satisfaction of HUD** within the time period specified in this Section, HUD may, in its sole discretion, cash any LoC, withdraw remaining funds from the Cash Escrow account, and/or file a claim against the bonding company and seek remedies provided in the attached Use Agreement, as the Secretary deems appropriate. If HUD cashes the Purchaser's LoC or withdraws remaining funds from the Cash Escrow account as a remedy for the Purchaser's default under the repair program, HUD may apply the funds so obtained to complete the repairs or for such other purposes as the Secretary deems appropriate.

Relocation Restriction

The Purchaser covenants to comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(j), and the regulations thereunder, 24 CFR § 290.17, as explained in paragraphs 2 through 5, below. Additionally, the Purchaser covenants to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations.

- 1. If temporary or permanent relocation is necessary because of such rehabilitation, Purchaser covenants to provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
- 2. If temporary relocation is necessary because of such rehabilitation, Purchaser covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which, to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
  - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
  - (b) Expenses of returning to a repaired unit on the Property.If relocated off-site, the Purchaser must provide any resident who is temporarily relocated because of the rehabilitation, the right of first refusal to return to the Property as long as the resident is in good standing under any lease agreements prior to re-occupancy.
- 3. If permanent relocation is necessary because of such rehabilitation, Purchaser covenants to provide assistance, as described below, to tenants, as may be appropriate:
  - (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement housing, which, to the extent feasible, shall be in a location not generally less desirable than the Property.
  - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household and the circumstances surrounding the move.**HUD will not provide the Purchaser with any funds or subsidy with which to make the payments required by this paragraph.**

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER\_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT\_\_\_\_\_

RIDER 6 OF 8  
**LEAD-BASED PAINT HAZARDS**

The Use Agreement includes the following provisions:

1. In order to comply with 42 USC §§4821-4886 and the regulations thereunder, 24 CFR Part 35 (the "Regulations"):
  - ☒ Purchaser covenants that the Property will be inspected and tested for lead-based paint, and any hazards will be abated in accordance with the Regulations.
  - ☐ Purchaser covenants that any lead-based paint hazards will be abated in accordance with the Regulations.

Purchaser shall certify to the Secretary (in a form acceptable to the Secretary) and the Secretary shall determine, through inspection (or discretion, the inspection and certification of a local government official) that all lead-based paint hazards have been removed from the Property in accordance with the Regulations
2. Purchaser understands and agrees that the Secretary's inspection and finding of satisfactory performance is not intended to and does not constitute a guarantee that all lead-based paint and all potential lead-based paint hazards have been eliminated from the Property and does not relieve Purchaser of its ongoing responsibility for complying with all applicable state and local lead-based paint laws and regulations.
3. Purchaser agrees to indemnify, defend, and hold the Secretary harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of lead-based paint health hazards, the prohibition against the use of lead-based paint, and Purchaser's responsibility for complying with applicable state and local lead-based paint laws and regulations.
4. If temporary or permanent relocation is necessary because of such abatement, Purchaser covenants that it will comply with paragraphs 5 through 8, below. Additionally, the Purchaser covenants that it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Act"), as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24. The Purchaser is responsible for ensuring compliance with the Act and regulations thereunder, notwithstanding any contractual obligations with third parties to comply with the Act and regulations. Purchaser covenants to provide advance written notice of the expected displacement to the residents. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
5. If temporary relocation is necessary because of such abatement, Purchaser covenants to provide assistance to tenants in locating decent, safe and sanitary dwelling/housing unit, which to the extent feasible, shall be in a location not generally less desirable than the Project, and reimburse tenant for:
  - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
  - (b) Expenses of returning to a repaired unit on the Property.
6. If permanent relocation is necessary because of such abatement, Purchaser covenants to provide assistance, as described below, to tenants, as may be appropriate:
  - (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement Housing which, to the extent feasible, shall be in a location not generally less desirable than the Property.
  - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by The Secretary to be reasonable considering the size of the household and the circumstances surrounding the move.
7. The Purchaser covenants not to increase the rent for any units, from the rent the Secretary is requiring a tenant to pay on the Closing date, until such unit meets all the abatement requirements set forth in paragraph 1, above.
8. Purchaser agrees to comply with Section 35.88 "Disclosure Requirements for Sellers and Lessors" and Section 35.92 "Certification and Acknowledgement of Disclosure" of 24 CFR – *Lead-Based Paint Poisoning Prevention in Certain Residential Structures*.
9. If Purchaser fails to comply with paragraph 1, above, and no extension by written agreement has been granted by the Secretary, the Secretary and/all successors in office shall be entitled to:
  - (a) Enter and terminate the estate hereby conveyed, or
  - (b) Cash Purchaser's Loc(s) and apply the funds to perform or correct such work, or for such purposes as HUD deems appropriate, or
  - (c) Request payment or performance under any payment and/or performance bond described in the Rider Required Rehabilitation, Repair Escrow, Relocation.

These rights and remedies may be exercised separately or in combination.

10. Notwithstanding 9(a) through (c) above, the Secretary will not exercise those remedies, if any lender holding a lien or security interest on the Project:
- (a) Gives written notice to the Secretary within the period provided for repairs, that it intends to complete the repairs, and
  - (b) Completes such repairs within thirty (30) days of the notice or within such longer periods that HUD may approve in writing.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER\_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT\_\_\_\_\_

Use Agreement

RIDER 7 OF 8  
**ASBESTOS HAZARDS**

The Use Agreement includes the following provisions:

1. Purchaser agrees to indemnify defend, and hold HUD harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of asbestos health hazards, the prohibition against the use of asbestos and Purchaser's responsibility for complying with applicable state and local asbestos laws and regulations.
  - (a) Purchaser covenants that the Property will be inspected and tested asbestos hazards, and any hazards will be remediated. The purchaser will remediate the asbestos hazards in accordance with the relevant provisions of the Environmental Protection Agency regulatory standards and guidelines.
  - (b) Purchaser covenants that any asbestos hazards will be remediated in accordance with applicable federal, state, and local laws, regulatory standards and guidelines, including without limitation the Environmental Protection Agency Guidelines.
2. Purchaser shall develop and maintain on the site at all times an Operations and Maintenance Plan which will identify areas which involve asbestos hazards and establish work/repair guidelines.
3. If temporary or permanent relocation is necessary because of such remediation, Purchaser covenants to comply with Section 203(f)7 of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(j), and the regulations thereunder, 24 CFR §290.17, as explained in paragraphs 4 through 6, below. Additionally, the Purchaser covenants to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Purchaser covenants to provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
4. If temporary relocation is necessary because of such remediation, Purchaser covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
  - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
  - (b) Expenses of returning to a repaired unit on the Property.
5. If permanent relocation is necessary because of such remediation, Purchaser covenants to provide assistance, as described below, to tenants, as may be appropriate:
  - (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement housing, which to the extent feasible, shall be in a location not generally less desirable than the Property.
  - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household and the circumstances surrounding the move.
6. The Purchaser covenants not to increase the rent for any units, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the remediation requirements set forth in paragraph 1, above.
7. If Purchaser fails to comply with paragraph 1, above, and no extension by written agreement has been granted by HUD, HUD and/all successors in office shall be entitled to:
  - (a) Enter and terminate the estate hereby conveyed, or
  - (b) Cash Purchaser's Loc(s) and apply the funds to perform or correct such work (remediation), or for such purposes as HUD deems appropriate, or
  - (c) Request payment or performance under any payment and/or performance bond described in the Rider Required Rehabilitation, Repair Escrow, Relocation.These rights and remedies may be exercised separately on in a combination.
8. Notwithstanding 7(a) through (c) above, HUD will not exercise those remedies, if any lender holding a lien or security interest on the Project:
  - (a) Gives written notice to HUD within the period provided for repairs, that it intends to complete the repairs/remediation, and
  - (b) Completes such repairs/remediation.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER\_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT\_\_\_\_\_



RIDER 8 OF 8  
**MOLD HAZARDS**

The Use Agreement includes the following provisions:

1. Purchaser agrees to indemnify defend, and hold HUD harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of mold health hazards, and Purchaser's responsibility for complying with applicable Environmental Protection Agency's regulations and state and local laws and regulations.
  - (a) Purchaser covenants that the Property will be inspected and tested for mold and mold conditions, and any hazards will be remediated. The purchaser will remediate the mold or mold conditions in accordance with the relevant provisions of the Environmental Protection Agency regulatory standards and guidelines.
  - (b) Purchaser covenants that any mold hazards will be remediated in accordance with applicable federal, state, and local laws, regulatory standards and guidelines, including without limitation the Environmental Protection Agency (EPA) Guidelines.
2. If temporary or permanent relocation is necessary because of such remediation, Purchaser covenants to comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(j), and the regulations thereunder, 24 CFR §290.17, as explained in paragraphs 4 through 6, below. Additionally, the Purchaser covenants to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Purchaser covenants to provide advance written notice of the expected displacement to the residents. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
3. If temporary relocation is necessary because of such remediation, Purchaser covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
  - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
  - (b) Expenses of returning to a repaired unit on the Property.
4. If permanent relocation is necessary because of such rehabilitation, Purchaser covenants to provide assistance, as described below, to tenants, as may be appropriate:
  - (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement housing, which to the extent feasible, shall be in a location not generally less desirable than the Property.
  - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household and the circumstances surrounding the move.
5. The Purchaser covenants not to increase the rent for any units, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the remediation requirements set forth in paragraph 1, above.
6. If Purchaser fails to comply with paragraph 1, above, and no extension by written agreement has been granted by HUD, HUD and/all successors in office shall be entitled to:
  - (a) Enter and terminate the estate hereby conveyed, or
  - (b) Cash Purchaser's Loc(s) and apply the funds to perform or correct such work (remediation), or for such purposes as HUD deems appropriate, or
  - (c) Request payment or performance under any payment and/or performance bond described in the Rider Required Rehabilitation, Repair Escrow, Relocation.These rights and remedies may be exercised separately or in a combination.
7. Notwithstanding 6(a) through (c) above, HUD will not exercise those remedies, if any lender holding a lien or security interest on the Project:
  - (a) Gives written notice to HUD within the period provided for repairs/remediation, that it intends to complete the repairs/remediation, and
  - (b) Completes such repairs/remediation.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

**ATTACHMENT D**  
LETTER OF CREDIT (LoC) SAMPLE

(ISSUING BANK'S LETTERHEAD)

IRREVOCABLE UNCONDITIONAL LETTER OF CREDIT NO. \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_

U.S. Department of Housing and Urban Development  
801 Cherry Street, Unit #45, Ste. 2500  
Ft. Worth, TX 76102

Attention: Mr. Jack Stark  
6AC – 28<sup>th</sup> Floor

Dear Sir:

For the account of \_\_\_\_\_  
(name of account party/customer)  
we hereby authorize you to draw on us at sight up to an aggregate amount of U.S. \$ \_\_\_\_\_,  
effective immediately and expiring on \_\_\_\_\_, 20\_\_\_\_.

This Letter of Credit is irrevocable and unconditional.

Funds under this Credit are available to you against your sight draft(s) on us, substantially in the form attached as Exhibit A, for all or any part of this Credit.

This Letter of Credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We will promptly honor all drafts in compliance with the terms of this credit if received on or before the expiration date at

\_\_\_\_\_  
(bank's address)

This Credit is governed by the laws of \_\_\_\_\_.

Sincerely,

(Issuing Bank)

By: \_\_\_\_\_

**SAMPLE SIGHT DRAFT**

(HUD LETTERHEAD)

(Name and address of bank) \_\_\_\_\_  
\_\_\_\_\_  
(City, State)  
\_\_\_\_\_, 20\_\_\_\_

Pay to the order of the U.S. Department of Housing and Urban Development the sum of  
\$ \_\_\_\_\_. This draft is drawn under your Irrevocable Letter of  
Credit NO. \_\_\_\_\_.

U.S. Department of Housing and Urban Development

By: \_\_\_\_\_

**Certification of Substantial Compliance**

TO: The United States Department of Housing and Urban Development

FROM: \_\_\_\_\_

I Certify to HUD that any and all project(s) that are owned by \_\_\_\_\_, or its affiliates, and located in \_\_\_\_\_ (City or Town where project being purchased is located) is/are in substantial compliance with applicable state and/or local housing statutes, regulations, ordinances and codes and are listed on Schedule A attached hereto.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

By: \_\_\_\_\_  
Purchaser Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

STATE OF: \_\_\_\_\_ )  
COUNTY OF: \_\_\_\_\_ )  
Came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. ~~Notary Seal~~

Schedule A: All projects owned by \_\_\_\_\_ or affiliates.

List each project name	List name of principal or affiliate with ownership of project.	List project address

## PROTECTING TENANTS AT FORECLOSURE ACT OF 2009

Applicable to all foreclosure sales taking place from May 21, 2009, through December 31, 2012

In the case of foreclosure involving any multifamily residential dwelling, the purchaser at foreclosure shall be subject to the following:

1. Any bona fide tenant occupying a unit as of the date of the notice of foreclosure must be given 90 days prior notice to vacate the unit; and
2. Any tenant retains all of its rights as of the date of the notice of foreclosure. These rights include:
  - (A) Any tenant who, on or after the date of the notice of foreclosure, is under a lease agreement entitling the tenant to occupy the premises until the end of the remaining term of the lease, will continue to maintain his/her rights under the lease agreement, except that a purchaser at foreclosure *who will occupy a unit as a primary residence* may, terminate a tenant's lease for that unit, effective on the date of sale, by issuing notice of the termination of tenancy to the tenant at least 90 days prior to the effective date of the notice.
  - (B) Any tenant who is a tenant at will under state law or occupies the unit without a lease retains all of its rights regarding occupancy of the unit, except such tenant may be required by a purchaser at foreclosure to vacate the unit provided that the tenant is given 90 days prior notice by the purchaser at foreclosure.
  - (C) Nothing contained in paragraphs 1 and 2 herein shall affect the requirements for termination of any federal or state subsidized tenancy or of any state or local law that provides longer time periods or additional protections for tenants, those rights will be retained by the tenant.
3. If the tenant holds a Section 8 voucher and has a lease agreement, the purchaser at foreclosure may terminate the tenancy effective as of the date of the transfer of ownership to the purchaser if (1) the purchaser will occupy the unit as a primary residence and (2) provides the tenant with a notice to vacate at least 90 days before the effective date of the notice.
4. The purchaser at foreclosure will assume its interest in the property subject to: (1) the existing leases between the prior owner and the current tenants; and (2) the existing Housing Assistance Payments contract between the prior owner and the public housing agency for any occupied unit, except that requirements contained in this paragraph 4 and in paragraph 3 shall not affect any state or local law that provides longer time periods or other additional protections for tenants.